IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO.1136 OF 1996
IN
WRIT PETITION NO.1825 OF 1996

Madhukar Rangnath Kulkarni,
c/o. Shri S.S.Mandrekar,
Dattatray Bhuvan,
Eksar, Borivli(West),
Mumbai 400 103. Appellant
(original petitioner)

vs.

1. The New India Assurance Co.Ltd.,
a subsidiary of the General
Insurance Corporation of India,
87, Mahatma Gandhi Road, Fort,
Mumbai 400 001.

2. General Insurance Corporation
of India,
Registered Office - "Suraksha",
170, Jamshedji Tata Road,
Churchgate, Mumbai 400020,

3. Union of India,
Through the Department of
Law & Judiciary, Aaykar Bhavan,'
Maharashi Karve Road,
Churchgate, Mumbai 400 020. Respondents
(original Respondents)

None for the appellant.

Mr.V.Y. Sanglikar for respondents 1 and 2.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 23rd September 2004

ORAL JUDGMENT (Per R.M.Lodha,J.)

None appears for the appellant. Mr.V.Y.Sanglikar, advocate appears for respondents 1 and 2.

2. Though the appeal is liable to be dismissed in default, yet with the assistance of the learned counsel for respondents 1 and 2 we perused the available material including the impugned judgment.

3. The appellant who was Assistant Manager in the New India Assurance Company Limited vide letter dated 8th August 1991 resigned from the services of the company forthwith. The appellant also requested the company to accept his intimation of resignation as notice of three months as required under the Rules. The company accepted the appellant's resignation with effect from 8th November 1991 i.e. on expiry of three months from the date of intimation. The appellant claimed benefit of pension under the Scheme entitled "General Insurance Employees' Pension Scheme, 1995" framed by the Government of India in exercise of the powers conferred by Section 17A of the General Insurance Business (Nationalisation) Act, 1972. The said benefit was denied that led to the filing of the writ petition by the appellant.

4. The question under consideration before the learned Single Judge was whether the appellant was entitled to pension under the said Scheme. Clause 3 of the scheme provided for the applicability of the scheme. Interalia it provided that the scheme shall apply to the employees

who were in the service of the company on or after the first day of January 1986, but retired before the first day of November 1993. Clause 22 of the scheme made a provision that resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

5. In Reserve Bank of India v. Cecil Dennis Solomon, Labour Industrial Cases, 4034, the Supreme Court considered the expressions, "superannuation"; "voluntary retirement"; "compulsory retirement" and "resignation" as known in service jurisprudence. While dealing with the said expressions, the Supreme Court observed thus:

> "10. In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time: but in the case of voluntary retirement, it can only be sought for after rendering prescribed period for qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandate, while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation

> is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal (AIR 1989 SC 1083), on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra (1978 (2) SCC 301), it was held in the case of a Judge of the High Court having regard to Article 217 of the Constitution that he has an unilateral right or privilege to resign his office and his resignation becomes effective from the date which he of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power."

6. The Supreme Court, thus, drew the basic distinction between the "voluntary retirement" and "resignation" by expounding that in case of "resignation" it can be tendered at any time, but in the case of "voluntary retirement" it can only be sought for after rendering the prescribed period of qualifying service. The other fundamental distinction drawn by the Supreme Court was that in the case of "resignation" the employee is denied normal retiral benefits, but in the case of "voluntary retirement", the employee is not denied such benefits. In the backdrop of the legal position highlighted by the Supreme Court and when the relevant provisions of the scheme, particularly clauses 3 and 22 are seen, it is clear that the appellant who resigned from the service

was not eligible under the scheme. He could not get the benefits that were available to a retiree.

7. All in all, we find that the consideration of the matter by the learned Single Judge is in accord with the law and does not suffer from any legal infirmity.

8. The appeal, thus, fails. Since the appellant has not appeared, no costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)